HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 22, 2015
84th Legislature, Number 55
The House convenes at 10 a.m.
Part Two

Twenty-five bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 55

HOUSE RESEARCH ORGANIZATION

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Wednesday, April 22, 2015

84th Legislature, Number 55

Part 2

SUBJECT: Allowing monthly reporting for certain sanitary sewer overflows

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

1 absent — Frank

WITNESSES: For — Brian Butscher, City of Corpus Christi; Steve Coonan, Water Environment Association of Texas; Julie Nahrgang, Water Environment Association of Texas and Texas Association of Clean Water Agencies; (*Registered, but did not testify*: Mike Howe, American Water Works Association, Texas Section; Matt Phillips, Brazos River Authority; Tom Tagliabue, City of Corpus Christi; TJ Patterson, City of Fort Worth; Tony Privett, City of Lubbock; Russell Schreiber, City of Wichita Falls; Amy Beard, SouthWest Water Company; Dean Robbins, Texas Water Conservation Association; Amy Stelter, Trinity River Authority of Texas)

Against — Steve Hupp, Bayou Preservation Association; (*Registered, but did not testify*: Kelly Davis and Lauren Ice, Save Our Springs Alliance; Ken Kramer, Sierra Club-Lone Star Chapter; David Weinberg, Texas League of Conservation Voters)

BACKGROUND: Under Water Code, sec. 26.039 when an accidental discharge or spill occurs that may cause pollution, the responsible party is required to notify the Texas Commission on Environmental Quality (TCEQ) as soon as possible and no later than 24 hours after the occurrence. The individual's notice to TCEQ must include the location, volume, and content of the discharge or spill.

The individual running or responsible for the facility must notify appropriate local government officials and local media if the spill could affect a drinking water source.

A sanitary sewer overflow is a type of unauthorized discharge of partially

treated or untreated wastewater from a collection system or its components — for example, a manhole, lift station, or cleanout — that occurs before the wastewater reaches a wastewater treatment facility.

DIGEST:

CSHB 2051 would allow individuals to notify the Texas Commission on Environmental Quality (TCEQ), local government officials, or local media of a sanitary sewer overflow on a monthly basis, rather than within 24 hours of the occurrence, if the sanitary sewer overflow:

- was 1,000 gallons or less;
- was not associated with another accidental discharge or spill;
- had been controlled or removed before it could enter state water or adversely affect a source of drinking water;
- would not endanger human health, safety, or the environment; and
- was not subject to other local regulations and reporting requirements.

TCEQ must adopt rules by June 1, 2016, that consider the compliance history of the individual and establish procedures for the individual to submit the monthly summary of sanitary sewer overflow incidents. Monthly summaries would have to include the location, volume, and content of each sanitary sewer overflow.

CSHB 2051 would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2051 would lessen the reporting burden on both utilities and TCEQ without putting the public at any additional risk from sanitary sewer overflow incidents. Under current law, a sanitary sewer overflow must be reported to TCEQ within 24 hours, regardless of volume. The bill would create a minimum reportable volume of 1,000 gallons for sanitary sewer overflows, and sanitary sewer overflows under the 1,000-gallon threshold would be submitted in a monthly report to TCEQ. A sanitary sewer overflow above the threshold, or if any amount affected a drinking source or endangered human health and safety, would still need to be reported within 24 hours of the occurrence.

An informal survey of Texas utilities indicates that a large percentage of

reported sanitary sewer overflows are less than 1,000 gallons, including releases from events when city workers perform repairs or routine maintenance within the system. The majority of sanitary sewer overflows of this size do not reach waters of the state and do not cause an environmental impact. The requirement to report all sanitary sewer overflows within 24 hours regardless of amount creates a reporting burden on public utilities and an information management burden for TCEQ. It also has the potential to mislead the public into thinking that a serious public health and safety issue exists every time a sanitary sewer overflow is reported.

The bill would allow utilities to better organize reporting data to pinpoint potential impacts to public health and the environment. Creating the threshold of reportable quantities would not prevent any sanitary sewer overflow from being reported, but would make the paperwork and time frame for submitting reports on relatively low-volume sanitary sewer overflows more reasonable and less burdensome on the utilities and would provide more meaningful information to the public.

The bill would not eliminate the clean-up requirements for any sanitary sewer overflow, merely the reporting requirements for those under a certain threshold that did not affect state waters or drinking water sources, nor would it endanger human health, safety, or the environment.

OPPONENTS SAY:

Current protocol enables TCEQ to pinpoint issues of concern and address them before they become major problems. Under CSHB 2051, a facility having problems with sanitary sewer overflows that were relatively low volume but occurred on an ongoing basis could escape the attention of TCEQ for up to a month. During that time, a bigger problem could develop. This could allow a facility to cover up a problem that should be brought to TCEQ's immediate attention and could interfere with TCEQ's ability to ensure that the discharge did not result in any impacts to human health, public safety, or the environment. Any measure that might compromise the ability of TCEQ to identify persistent problems and enforce compliance would be counterproductive.

The bill also would remove the requirement to immediately report a sanitary sewer overflow below the threshold to local government officials

and the local media, which could keep the public in the dark about potential problems at a facility.

The bill would allow the facility responsible for the sanitary sewer overflow to make a determination not only of the volume of the spill, but also whether the overflow had been controlled or removed, entered state water, harmed a source of drinking water or endangered human health or safety or the environment. A more objective party should be making that determination, especially if the sanitary sewer overflow occurred in the recharge or contributing zone of an underground aquifer.

Concerns that the current notification process involves a short time frame and a costly and cumbersome process could be addressed with changes to the reporting system. An alternative could be an electronic system to facilitate reporting by the facility and review by TCEQ. This could also improve the accuracy of the records kept by TCEQ.

NOTES:

The Senate companion bill, SB 912 by Eltife, was received by the House on April 15. It was approved by the Senate on April 14.

SUBJECT: Requiring registrars to submit additional voting history information

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Laubenberg, Fallon, Israel, Phelan, Schofield

0 nays

2 absent — Goldman, Reynolds

WITNESSES: For — Ed Johnson, Harris County Clerk's Office; Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Alan Vera, Harris County Republican Party; Bill Fairbrother, TRCCA, Legislative Chair; Gaudette; Kathy Haigler; Kelly Horsley; Colleen Vera)

Against — None

On — Keith Ingram, Secretary of State, Elections Division; (*Registered, but did not testify*: Ashley Fischer, Secretary of State)

BACKGROUND: Election Code, sec. 18.069 requires an election registrar to electronically submit to the secretary of state the record of each voter participating in the primary, runoff primary, or general election or special election called by the governor within 30 days after the election date.

DIGEST: HB 2050 would require an election registrar to include, along with the information already required to be submitted to the secretary of state, a notation of whether the voter voted on election day, voted early by personal appearance, voted early by mail, or voted early by mail as a federal postcard applicant.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 2050 would ensure that voter records accurately reflected the manner in which each voter participated in an election. Some election clerks already submit voter records identifying the method a person used to vote, but the information provided is not always designated correctly. This bill

would help address this issue by requiring registrars to specify how voters cast their vote and by providing a list of possible designations.

When voter data is incomplete, election clerks receive dozens of open records requests from political parties and people with private voter databases. These requests can be costly and time consuming, especially if the registrar for a small county must respond to multiple requests. HB 2050 would reduce that administrative burden by requiring registrars to submit that information to the secretary of state's office, which would serve as a statewide repository for information on how each voter cast a ballot.

Election clerks already must submit voting data to the secretary of state. This bill simply would require an additional piece of information to be included. Most counties already submit their data with a notation about how the votes were cast. Because there is not technological barrier to submitting this additional information, it should be required of all counties.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Allowing for habilitation services in Medicaid managed care

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Rose, Keough, Klick, Naishtat, Peña, Price, Spitzer

0 nays

1 absent — S. King

WITNESSES: For — Stacey Mayfield; (*Registered, but did not testify*: Carole Smith, Private Providers Association of Texas; Rachel Hammon, Texas Association for Homecare and Hospice; Danette Castle, Texas Council of Community Centers)

Against — None

On — (*Registered, but did not testify*: Calvin Green, Department of Aging and Disability Services; Susan Murphree, Disability Rights Texas; Gary Jessee, Health and Human Services Commission)

BACKGROUND: SB 7 by Nelson, enacted by the 83rd Legislature, required the Health and Human Services Commission (HHSC) to put in place a cost-effective option for attendant and habilitation services for people with disabilities under STAR+PLUS, a Medicaid managed care provider. Texas recently received approval for a federal Medicaid program called Community First Choice that allows the state to provide these services using STAR+PLUS. The state would begin providing habilitation services under STAR+PLUS using the Community First Choice program starting June 1, 2015.

According to the HHSC, individuals on a 1915(c) Medicaid waiver interest list who meet eligibility and coverage requirements for the program would be eligible to get Community First Choice services through the newly approved program. Those individuals already receiving services through a 1915(c) Medicaid waiver would continue to receive services exactly as they do today from their existing providers.

Government Code, sec. 534.001 defines “habilitation services” to include

assistance provided to individuals with acquiring, retaining, or improving skills related to the activities of daily living and the social and adaptive skills necessary to enable individuals to live and fully participate in the community.

DIGEST:

CSHB 4001 would require a license for the provision of habilitation services delivered by a licensed home and community support services agency. The bill would add the same requirements to the habilitation services license that exist for a license to provide home health, hospice, or personal assistance services.

Definitions. CSHB 4001 would define "habilitation" to mean habilitation services, as defined by Government Code, sec. 534.001, delivered by a licensed home and community support services agency. The bill also would add habilitation to the definition of a "home and community support services agency" and a "place of business."

Licensing. The bill would require a person, including a health care facility, to have a license to provide habilitation services. A person would not be required to hold a license for habilitation services until January 1, 2016. An applicant for a license to provide habilitation services would have to provide the same materials and meet the same requirements as currently provided in statute for an application for a license to provide home health, hospice, or personal assistance services. Additionally, the applicant would have to provide a plan for the orderly transfer of care of the applicant's clients if the applicant could not maintain or deliver habilitation services under the license. The license could designate dialysis and habilitation as the types of services that the home and community support services agency would be authorized to provide.

The bill specifically would exempt the following individuals from licensing:

- a person who provides habilitation services only as an employee of the license holder and who receives no benefit for providing the services other than wages; and
- a person who provides habilitation services only to individuals who receive benefits under the STAR+PLUS or other Medicaid managed care program under the program's Home and Community

Services or Texas Home Living certification.

Fees. The bill would require the executive commissioner of the Health and Human Services Commission (HHSC) by rule to set license fees for a habilitation services license of between $600 and $2,000, as required for home health, hospice, or personal assistance services licenses. A person who provided habilitation services without a license or represented to the public that the person was a provider of habilitation services without a license would be liable for a civil penalty of between $1,000 and $2,500 for each day of violation. The Department of Aging and Disability Services (DADS) also could assess an administrative penalty against a person who violated Occupations Code, sec. 102.001 related to soliciting patients for habilitation services.

Minimum standards and rules. The HHSC executive commissioner by rule would set minimum standards for home and community support services agencies licensing relating to habilitation services and would require each person or home and community support services agency providing habilitation to enforce the applicable provisions of Human Resources Code, ch. 102, relating to services for the elderly. The HHSC executive commissioner would adopt rules necessary to implement changes in law made by the bill by December 1, 2015.

Investigation of complaints. The bill also would apply the same regulations regarding investigation of complaints to habilitation services as apply to home health, hospice, or personal assistance services. The same complaints records requirements and retaliation provisions in Health and Safety Code, ch. 142 that apply to home health, hospice, or personal assistance services would apply to habilitation services.

Specialized training. DADS would have to include information about the provision of person-centered services to training materials for representatives of the department who survey home and community support services agencies. DADS would have to consult with habilitation services providers, recipients, and advocacy organizations in developing and updating the training.

Person-centered service delivery. The bill would add person-centered service delivery as a component of quality care defined under Health and

Safety Code, ch. 142, related to home and community support services.

Effective date. The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 4001 would add into statute a consistent and agreed-upon definition of "habilitation" that the home and community support services agencies (HCSSAs) could use as their guide to deliver home services under managed care. The bill would update the HCSSA license by incorporating habitation services. Habilitation services have not yet been delivered through managed care under the Community First Choice Medicaid program, and changes are needed in the applicable statutes to guarantee that home care agencies can deliver the services in a consistent and high-quality manner under managed care.

CSHB 4001 would add person-centered language to ensure that HCSSAs were compliant with the federal Centers for Medicare and Medicaid Services' home and community-based service requirements. The bill would give DADS clear regulatory oversight and directions for habilitation services delivered by HCSSAs in managed care.

The bill also would add language to ensure individuals who currently are receiving services by certified providers with 1915(c) waivers that will transition into managed care in 2017 or after could retain their current service providers without disruption.

CSHB 4001 would clean up a number of provisions in the Health and Safety Code. Most notably, the bill would add habilitation services to HCSSAs. Habilitation services should be added so that it is clear in the statute that they are authorized and that it is within the scope of HCSSAs to provide this service.

The bill would protect intellectual and developmental disability service providers and would allow them to be providers under STAR+PLUS. This is important because it would ensure the availability of services to a particularly vulnerable population of Texans.

OPPONENTS SAY:

CSHB 4001 is not necessary because habilitation services will be provided under Medicaid managed care regardless of whether the bill is enacted.

SUBJECT: Investment options for money recovered for a minor, incapacitated person

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

1 absent — Hernandez

WITNESSES: For — (*Registered, but did not testify*: Craig Hopper)

Against — None

On — Mark Davidson

BACKGROUND: Property Code, sec. 142.004(a) allows for money recovered in a lawsuit on behalf of a minor or incapacitated person to be invested by that person's next friend or appointed guardian ad litem in the Texas Tomorrow Fund.

DIGEST: HB 1560 would allow either the next friend or the appointed guardian of a minor or incapacitated person to invest any money recovered in a lawsuit on the person's behalf in a higher education savings plan or a prepaid tuition program under Education Code, ch. 54.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 1560 would provide judges, family members, and appointed guardians with options to prudently invest money received by a minor in a lawsuit. The bill would clean up outdated language that refers to the Texas Tomorrow Fund, which was closed to new enrollment in 2003. Instead, money recovered by a minor in a lawsuit could be invested in the successor programs to the Texas College Savings Plan and the Texas Tuition Promise Fund.

These successor programs were established because of problems with the Texas Tomorrow Fund. For example, the Texas College Savings Plan was created in response to criticisms that the Texas Tomorrow Fund lacked some of the flexibility and potential for higher returns offered by other state-sponsored prepaid trust fund programs. This bill simply would ensure that the Legislature's original intent to provide pre-paid tuition credits as an investment option in cases where minors were represented by next friends or appointed guardians was preserved.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Extending USF funds to certain entities through 2017

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jim Bellina, AMA Techtel)

Against — None

On — (*Registered, but did not testify*: Brian Lloyd, Public Utility Commission; Lucas Meyers, Texas Cable Association)

BACKGROUND: The Universal Service Fund (USF), which uses fees collected from telephone subscribers to subsidize service for rural customers and customers who need assistance, was established under Utilities Code, ch. 56, subch. B. SB 583 by Carona, enacted by the 83rd Legislature in 2013, established rules for ending USF support to competitive local exchange carriers (CLECs). It ends USF support in high-cost markets, such as rural areas, either 24 months after the incumbent local exchange carrier (ILEC) in a market deregulated or on December 31, 2017, two years after it was expected that all of the high-cost markets would deregulate. All CLECs associated with telephone cooperatives would lose USF funding in December 2017, while other CLECs would lose funding at the earlier of the two dates.

DIGEST: HB 1618 would amend Utilities Code, sec. 56.023(p) to extend Universal Service Fund (USF) funding to all competitive local exchange carriers (CLECs), not just those associated with telephone cooperatives, until December 31, 2017, or two years after the local incumbent local exchange carrier (ILEC) or telephone cooperative stops receiving USF support, whichever is later.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1618 would bring fairness to the deregulation process in the Texas telephone market. The enactment of SB 583 by Carona in 2013 carved out a special provision for cooperative carriers in deregulated markets, but the small businesses that serve rural Texans also need Universal Service Fund (USF) support.

AT&T, one of the state's two largest incumbent telephone companies, deregulated its telephone business in July 2014, earlier than anticipated. This created a situation in which small competitive local exchange carriers (CLECs) that expected USF funding into 2017 found they would be losing it a year and a half early. This threatens their ability to continue to operate.

These small carriers based their business plans on USF funds continuing until 2017. Smaller telephone companies serving rural areas did not expect AT&T to deregulate as quickly as it did. These carriers need the USF support to serve rural customers and make plans for survival in the deregulated environment. HB 1618 would help ensure that competition continued in deregulated rural markets. It also would help smaller telephone companies continue to serve customers in rural Texas, where there is no longer an obligation to serve.

OPPONENTS SAY:

HB 1618 would cost consumers money by keeping the unnecessary USF fees on their phone bills. The Public Utility Commission estimates how much money will be needed for USF subsidies and then bases the USF fee on those needs. If the need for USF subsidies is lowered, as it would be under the current law, the USF fees would be lowered. HB 1618 would continue this outdated tax on phone service.

OTHER OPPONENTS SAY:

HB 1618 would not go far enough to support telecommunications infrastructure in rural Texas. Although it currently emphasizes traditional voice services, the USF plays an important role in building out Internet infrastructure to rural Texans. Without USF subsidies, many companies that provide Internet access to rural Texans might not be able to stay in business. New federal guidelines that would emphasize Internet access over voice communication are expected to be phased in over the next few

years. USF funds for rural voice carriers, particularly those that also provide Internet service, should continue until these new federal guidelines are in place.

SUBJECT: Repealing a $200 additional annual fee for certain occupational licenses

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Gutierrez, Goldman, Kuempel, Miles, D. Miller

0 nays

3 absent — Geren, Guillen, S. Thompson

WITNESSES: For — Judith Bundschuh, Texas Association of Realtors; Greg Glod, Texas Public Policy Foundation; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Jon Weist, City of Irving; Jeff Wolverton, McWilliams Government Affairs, on behalf of American Society of Landscape Architects Texas Chapter; David Mintz, Texas Academy of General Dentistry; Cathy Dewitt, Texas Association of Business; George Christian, Texas Association of Defense Counsel; R. Clint Smith, Texas Association of Property Tax Professionals; Steven Garza and Daniel Gonzalez, Texas Association of Realtors; Brittney Booth, Texas Business Law Foundation; Ybarra, Texas Chiropractic Association; Darren Whitehurst, Texas Medical Association; Jim Reaves, Texas Nursery and Landscape Association; Heather Aguirre, Texas Osteopathic Medical Association; David Lancaster, Texas Society of Architects; Bob Owen, Texas Society of Certified Public Accountants; Jennifer McEwan, Texas Society of Professional Engineers; Mark Hanna, Texas Society of Professional Surveyors; Royce Poinsett, Texas Veterinary Medical Association)

DIGEST: CSHB 2089 would repeal a $200 additional licensing fee imposed annually on the following 16 professions:

- Chiropractors;
- Physicians;
- Dentists;
- Optometrists;
- Psychologists;

- Certified public accountants;
- Architects;
- Engineers;
- Real estate brokers;
- Investment advisers;
- Attorneys;
- Veterinarians;
- Property tax consultants;
- Landscape architects;
- Interior designers; and
- Land surveyors.

This bill would take effect September 1, 2015 and would not be retroactive.

SUPPORTERS SAY:

CSHB 2089 would repeal a $200 additional licensing fee, essentially an occupations tax, that is imposed annually on 16 professions, covering approximately 400,000 licensed professionals. At the time the fees were enacted, the state faced a revenue shortfall. Many of these fees were categorized as temporary and assessed because the selected professions were not subject to the franchise tax in place at the time. When the franchise tax methodology was changed in 2006, these professions were included. Despite the affected professions inclusion in Texas' current franchise tax, the $200 occupations fee remains in effect.

This $200 fee is a hidden double tax that selectively targets certain professional service industries and is levied in addition to the licensing fees these Texans already pay. Most licensed professionals have their own small businesses. By eliminating the $200 annual fee, these professionals would be allowed to reinvest in their own businesses as well as back into the local economy instead of padding the state coffers. CSHB 2089 would save Texas professionals about $250 million over the next biennium.

OPPONENTS SAY:

CSHB 2089 would result in a nearly $250 million loss of general revenue related funds through the next biennium. From each $200 fee collected, $50 is deposited to the Foundation School Fund and the remaining $150 is deposited to the General Revenue Fund.

Given that significant tax cuts are already on the table this legislative session, it would be inappropriate to make further reductions when there are many underfunded priorities, including public education, that would suffer from the loss of revenue.

NOTES:

According to the fiscal note, CSHB 2089 would have a negative impact of about $250 million through the next biennium.

The Senate companion bill, SB 765 by Eltife, was left pending in the Senate Finance Committee on March 4.

SUBJECT: Licensing and appointment of title insurance escrow officers

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: Allen Place, Texas Land Title Association)

Against — None

On — Marianne Baker and Jamie Walker, Texas Department of Insurance

BACKGROUND: Insurance Code, ch. 2652 provides for licensing of escrow officers. The law requires each title insurance agent employing an escrow officer to apply for that officer's license and renewals. Some escrow officers who perform services for more than one title agent have multiple licenses.

DIGEST: CSHB 2491 would allow an individual to apply for an escrow officer's license with the Texas Department of Insurance (TDI). A licensed officer would not be able to act on behalf of a title insurance agent until the agent had filed the escrow officer's appointment with TDI. The bill would allow an escrow officer to be employed and appointed by more than one title insurance agent.

The title insurance agent making an appointment would be required to file electronic or non-electronic forms certifying that the escrow officer being appointed is a bona fide employee covered by a surety bond or deposit. The officer could begin acting for the appointing agent two days after the date an electronic appointment form was submitted or eight days after the date a non-electronic form was submitted.

An escrow officer would be allowed to renew an unexpired license by submitting a required form and paying a renewal fee in an amount set by

TDI. An escrow officer's appointment would expire upon the revocation, termination, or nonrenewal of the license or termination of the individual's employment with the title agent. The bill would repeal a requirement that a title agent apply for renewal and pay a nonrefundable license renewal fee of up to $50 for each escrow officer it employs.

The bill would remove a requirement for automatic termination without notice of an escrow officer's license when an employing title agent surrenders a license or has it revoked. It would repeal a requirement for automatic forfeiture of an escrow officer's license if the officer was not employed by a title agent.

TDI would be required to make certain information available to the public, including each escrow officer's name, license number, continuing education compliance status, and appointment history. TDI also would be required to provide information on the date an enforcement action against an escrow officer became final to each appointing title agent.

The bill also would require that continuing education programs for escrow officers be certified under statutory continuing education programs generally applicable to insurance professionals. It would make conforming changes and delete an outdated reference to a TDI deputy commissioner.

The bill would take effect September 1, 2015, and would apply only to the issuance or renewal of an escrow officer's license on or after January 1, 2016.

SUPPORTERS SAY:

Title insurance agents employ escrow officers to handle the paperwork related to closings on real estate transactions. Acting as neutral third parties, escrow officers regularly hold and disperse money in connection with the transfer of real property.

CSHB 2491 would treat escrow officers in the same manner as other professionals licensed by TDI. It would eliminate the requirement that an escrow officer who works for more than one title agent have multiple licenses. An escrow officer, instead of the title agency, would be responsible for obtaining and renewing a license.

Title agents would continue to be responsible for oversight of any escrow officers who work on their behalf through the bill's appointment process and bonding requirements.

The bill would create a more efficient and consistent licensing and renewal process. Under current law, all escrow officer licenses associated with a title agent renew at the same time the title agent's license renews. This often creates a spike in demand when large title agencies renew. The proposed renewal process could reduce the time it takes TDI to renew both title agent and escrow officer licenses. Escrow officers would no longer have to wait for a new license if they changed employers and would not automatically lose their license if they took a leave of absence.

The single license system could improve transparency by making it easier for consumers and title companies to check the license status of an escrow officer using TDI's online databases. The bill would require TDI to disclose final enforcement actions taken against an escrow officer to any appointing title agents.

The bill would not reduce consumer protection standards. TDI would continue to use criminal history and other information to ensure those receiving licenses as escrow officers were worthy of the public trust.

OPPONENTS SAY:

CSHB 2491 could reduce oversight of escrow officers and impact consumer protection. The bill would allow an escrow officer to apply for a license independent of a sponsoring title agency. It would end automatic license forfeiture if an escrow officer was not employed by a title company. The bill also would remove the automatic termination of an escrow officer's license when an employing title company loses its license. These changes could make it easier for an individual to act as a rogue "free agent" without the legally required association with a title company.

NOTES:

The Senate companion bill, SB 1548 by Eltife, was referred to the Senate Business and Commerce Committee on March 23.

SUBJECT: Providing certain authorizations to Texas Indigent Defense Commission

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer, Tinderholt, Wu

0 nays

1 absent — Stickland

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Patti Jones, Lubbock County; Will Jones, McLennan County; Mark Mendez, Tarrant County Commissioners Court; Rick Thompson, Texas Association of Counties; Patricia Cummings, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Conrad John, Travis County Commissioners Court; John Brieden, Washington County)

Against — None

On — Wesley Shackelford, Texas Indigent Defense Commission

BACKGROUND: The Texas Indigent Defense Commission (TIDC), governed by Government Code, ch. 79, provides financial and technical support to counties to develop and maintain quality indigent defense systems. TIDC supports counties to provide for legal representation and defense services to indigent defendants at trial, on appeal, and in post-conviction proceedings.

Government Code, sec. 79.037 requires the commission to distribute funds to assist counties in providing indigent defense services based on each county's compliance with adopted standards and state law relating to indigent defense.

Government Code, ch. 791 authorizes local governments to contract with

one another and with state agencies. These agreements are called interlocal contracts.

DIGEST:

CSHB 2825 would allow the Texas Indigent Defense Commission (TIDC) to award a grant to local government entities or organizations that provide administrative services to counties under an interlocal agreement created to provide or improve indigent defense services in the county. TIDC would have to monitor each grant recipient and enforce compliance with the conditions of the grant in the same way as a grant awarded directly to a county.

If an interlocal agreement was created between TIDC and one or more counties, TIDC could participate and assist counties in the creation, implementation, operation, and maintenance of a computerized system to assist counties in the provision and administration of indigent defense services and the collection of data relating to representation of indigent defendants in Texas. CSHB 2825 also would permit TIDC to provide training services to counties related to the operation of the information system. The bill would specify that the indigent information system would not be a statewide technology center under Government Code, ch. 2054.

CSHB 2825 would permit TIDC to use appropriated funds to pay costs associated with the interlocal contract, including license fees, implementation costs, maintenance and operations costs, administrative costs, and other costs specified in the contract.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2825 would decrease administrative work for counties by allowing the Texas Indigent Defense Commission (TIDC) to award grants to entities that provide or improve a county's indigent defense services. Currently, counties contract with service providers to support their indigent defense services, but these contracts can become burdensome for county administrators, consuming resources and time. This bill would simplify the grant distribution process by eliminating a layer of bureaucracy.

CSHB 2825 also could enhance county and regional cooperation by

allowing counties to collaborate with one another and with the TIDC to establish an indigent defense information system, which would gather information across counties regarding indigent defense services.

The bill would give TIDC more oversight on the use of grant funding to counties and indigent defense service providers. Awarding grants to providers through counties means TIDC loses oversight of the funds and cannot ensure as effectively that all service providers are complying with TIDC standards and policies. This bill would permit TIDC to award funds directly to providers and to ensure compliance standards were being met.

OPPONENTS SAY:

CSHB 2825 would diminish local government oversight and authority by allowing TIDC to award grants directly to providers, rather than having to go through the counties. Counties, not state agencies, are in the best position to determine the needs of their local indigent populations.

SUBJECT: Deregulating hair braiding and removing licensing requirements

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson

0 nays

WITNESSES: For —Arif Panju, Institute for Justice; Greg Glod, Texas Public Policy Foundation; Isis Brantley; Paul Griffith; (*Registered, but did not testify*: Linda Connor)

Against — None

On — (*Registered, but did not testify*: William Kuntz, Texas Department of Licensing and Regulation)

BACKGROUND: Hair braiding is regulated under Occupations Code, chapters 1601 and 1602. Individuals wishing to braid hair for compensation must be licensed or certified. To receive a license or certificate, an individual must satisfy certain requirements, such as having a certain number of hours of education and training and paying a license fee.

In January 2015, a U. S. District Court judge held in *Brantley v. Kuntz* that a minimum square-footage and equipment requirement for hair braiding schools in Texas violated the U. S. Constitution and did not advance any legitimate government interest.

DIGEST: HB 2717 would eliminate licenses and certificates related to hair braiding, would require the Texas Department of Licensing and Regulation (TDLR) to issue a refund to all people who held one of those licenses or certificates, and would make conforming changes to statutory language.

The bill would eliminate the following licenses:

- hair braiding specialty certificate;
- hair braiding instructor license; and
- hair braiding specialty shop license.

HB 2717 would remove references to hair braiding in statutory provisions defining "barbering" and "cosmetology." The bill would exempt from barbering and cosmetology license requirements a person who performs only natural hair braiding, including braiding a person's hair, trimming hair extensions only as applicable to the braiding process, and attaching commercial hair by braiding and without the use of chemicals or adhesives. The bill would make several conforming changes to related statutory provisions.

The bill would require TDLR to issue refunds for license fees to those currently holding a hair braiding specialty certificate, instructor license, or specialty shop license before the effective date of the bill. TDLR would be required to prorate the fees on a monthly basis so that each license or certificate holder would receive a refund for the amount of the fee that was allocable to the number of months that the license would have been valid after the effective date of this bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2717 would lower the barrier to entry for people who wish to practice the art of hair braiding by not forcing them to receive formal education or pay license fees. A federal court recently held that the excessive regulation of hair braiding in Texas does not advance any legitimate government interest and fails to pass constitutional muster. This bill would address those issues by amending the regulations that affect hair braiding.

Hair braiding does not require the use of chemicals, adhesives, or even a comb — only hands. Unlike other hair-related practices, it represents a very low risk to the customer’s health or safety. Furthermore, hair braiding is not taught in barbering and cosmetology schools, yet there are formal education requirements for braiding-related licenses. Requiring

formal education that does not teach the trade covered by the license makes little sense.

While HB 2717 would have an initial negative fiscal impact on Texas's general revenue, this additional cost and decrease in revenue would ultimately be negated by savings resulting from the state's no longer having to inspect or regulate these licenses.

OPPONENTS SAY:

HB 2717 would decrease state revenue by eliminating the hair braiding licenses and associated fees. The bill also would cost Texas money because TDLR would have to issue refunds to the people who currently hold one of those licenses.

NOTES:

According to the Legislative Budget Board's fiscal note, HB 2717 is estimated to have a two-year negative net impact to general revenue-related funds of $123,000 during fiscal 2016-17.

The Senate companion bill, SB 1193 by West, was reported favorably from the Senate Business and Commerce Committee on April 21 and recommended for the local and uncontested calendar.

SUBJECT: Allowing TDLR to determine alternative qualifications for certain licenses

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Linda Connor; Jon Fisher, Associated Builders and Contractors of Texas; Lori Henning, Texas Association of Goodwills; Douglas Smith, Texas Criminal Justice Coalition)

Against — Linda Colwell

On — (*Registered, but did not testify*: William Kuntz, Texas Department of Licensing and Regulation)

BACKGROUND: Under Occupations Code, sec. 51.404 the Texas Commission on Licensing and Regulation can waive prerequisites to obtaining a license after reviewing an applicant's credentials and determining that an applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to Texas' requirements.

The commission also can waive prerequisites to obtaining licenses for applicants holding licenses issued by a jurisdiction with which Texas has reciprocity agreements. The commission can make agreements, subject to the governor's approval, with other states for licensing reciprocity.

DIGEST: HB 3742 would authorize the Texas Commission on Licensing and Regulation, the Texas Department of Licensing and Regulation, or the agency’s executive director to adopt an alternative means of determining or verifying eligibility for a license. The alternative method could include evaluating a person’s education, training, experience, and military service.

The bill would repeal the current provision in Occupations Code, sec. 51.404 outlining the criteria that must be used by the Texas Commission on Licensing and Regulation to waive licensing prerequisites and to establish license reciprocity. CSHB 3742 would establish similar criteria under a new section, and would expand authority to waive prerequisites from the Texas Commission on Licensing and Regulation to include the executive director. Under certain circumstances, the commission or the executive director could waive prerequisites for obtaining a license if an applicant currently held a similar license issued by another jurisdiction. The other jurisdiction would have to have license requirements substantially similar to Texas' requirements or have a reciprocity agreement with Texas.

The bill would repeal the current authority of the commission to enter into reciprocity agreements and would give that authority to the department.

For specific licenses that currently are exempt from Occupations Code, sec. 51.404's provisions on waiving prerequisites and reciprocity, the bill would replace a reference to the repealed section with a reference to the provisions created by the bill for alternative qualifications for licenses. These licenses would be exempt from the provisions of CSHB 3742.

The bill would take effect September 1, 2015, and would apply only to license applications submitted to TDLR on or after that date.

SUPPORTERS SAY:

HB 3742 is needed to give TDLR more flexibility to develop alternative means of deciding whether a person is eligible for a license issued by the department. The agency's 2015-2019 strategic planning process identified benefits to the state in allowing alternative methods to determine and verify license applicants.

Currently, the Texas Commission on Licensing and Regulation can waive prerequisites for licenses if someone has a license from another jurisdiction that has requirements substantially equivalent to Texas or if someone is from a state with a licensing reciprocity agreement with Texas. However, not all persons who are qualified to get a license in Texas come from backgrounds that fit these circumstances. For example, an electrician may come to Texas having worked or trained in a

jurisdiction under a license that does not have a title similar to a Texas license. Or, the electrician may have trained under an individual in another state but cannot receive credit for that training because the title of the person doing the training does not have a Texas equivalent or because the person who can attest to the electrician's work is a business owner and does not have a license.

HB 3742 would address this issue by authorizing the Texas Commission on Licensing and Regulation, the department, and the executive director of TDLR to adopt alternative ways of deciding whether someone was eligible for a license. Education, training, experience, and military service could be considered so that TDLR could more quickly issue licenses to appropriately skilled and experienced individuals who want to work in Texas.

The department needs flexibility to develop alternative means of issuing licenses without having a detailed process established in statutes. There could be wide variations in these cases, and any statute detailing a specific process would run the risk of excluding someone worthy of a license. To ensure the process would be fair and transparent, the department would establish general rules for the alternative methods, and there would be records to document and support licenses awarded this way.

HB 3742 also would streamline the current process for issuing licenses by waiving prerequisites under certain circumstances. The bill would authorize the executive director to waive the prerequisites, instead of the commission, to speed up the process and uncouple it from dependence on the commission, which could go months between meetings. HB 3742's provisions establishing when license prerequisites can be waived are substantially similar to current provisions, which would be repealed, but with updated language.

HB 3742 also would simplify and speed up the process of developing license reciprocity agreements with other states by shifting the authority for developing these agreements from the commission to the TDLR.

OPPONENTS SAY:

If alternative means are needed to determine or verify a person's eligibility for a license, it might be best to establish those methods in statute, rather than to give TDLR broad authority to do so.

SUBJECT: Alternative mail delivery methods for financial statement forms

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Alvarado, Hunter, R. Anderson, Bernal, Elkins

0 nays

2 absent — Schaefer, M. White

WITNESSES: For — Brian England, City of Garland; (*Registered, but did not testify*: Randy Cain, City of Dallas)

Against — None

BACKGROUND: Local Government Code, ch. 145 requires municipal officeholders or candidates for office in municipalities with a population over 100,000 to report personal financial information in a financial statement. Chapter 145 establishes standard procedures for mail delivery of these financial statement forms to municipal officeholders. Local Government Code, sec. 145.005 requires the municipal clerk or secretary to mail by post two copies of financial statement forms to municipal officeholders and appointees required to file a financial statement form. Candidates for municipal office are mailed one copy of the financial statement form.

DIGEST: HB 1256 would amend Local Government Code, ch. 145 to require a municipal clerk or secretary to deliver at least one copy of the financial statement form by post, personal delivery, email, or any other means of electronic transfer to a municipal officer and candidate for municipal office required to file the form.

This bill would continue to permit failure of delivery of financial statement forms as a defense to prosecution.

The bill would take effect September 1, 2015, and would apply to financial statements due and offenses committed on or after that date.

SUPPORTERS SAY:

HB 1246 would expand the methods of delivering important documents to municipal officeholders and candidates for office. Email is rapidly replacing post as a method of communication and has become an important component in government administration. Permitting delivery of these particular documents would save resources in the form of time and funds for municipal offices. Rather than waiting for the post, documents may be received instantly through the Internet with a time stamp to ensure they arrived by the required deadline set by Local Government Code, ch. 145.

OPPONENTS SAY:

HB 1246 would not achieve its goal of simplifying delivery because not all officeholders or candidates for office are knowledgeable about the Internet and email or have an email address. An individual may be more comfortable receiving mail through traditional post.

NOTES:

The Senate companion bill, SB 716 by Hall, was reported favorably by the State Affairs Committee on April 20 and placed on the intent calendar for April 22.

SUBJECT: Investments using funds in reinsurance trusts

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Frullo, Muñoz, Jr., G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Diane Greene, GSFS Group; (*Registered, but did not testify*: Thomas Ratliff, American Insurance Association; Joe Woods, Property Casualty Insurers Association of America)

Against — None

On — Jamie Walker, Texas Department of Insurance

BACKGROUND: Insurance Code, secs. 492.051 and 493.051 regarding reinsurance for property, casualty, life, health, and accident insurers each allow an insurer operating in Texas to reinsure in any solvent assuming insurer any risk or part of a risk that both insurers are authorized by law to assume.

When an insurer domiciled in Texas places reinsurance with a company that is not authorized to do business in Texas and wants to take credit for such reinsurance in its financial statements, Texas statute restricts the type of assets in which insurers or reinsurers may invest using funds held as security for the reinsurance contract. Under Insurance Code, secs. 492.104 and 493.104, funds held in trust for the ceding insurer as security for the payment of obligations under a reinsurance contract with a reinsurance company not authorized in Texas may be in the form of:

- cash;
- securities that qualify as admitted assets;
- securities that are readily marketable over a national exchange;
- securities that have a maturity date of not later than one year;
- securities listed by the National Association of Insurance Commissioners' Securities Valuation Office;

- certain letters of credit that meet the required standards; and
- another form of security acceptable to the insurance commissioner.

DIGEST:

CSHB 1344 would remove requirements that funds held as security for a reinsurance contract with a reinsurance company not authorized in Texas be invested in securities that are readily marketable over a national exchange and have a maturity date of not later than one year, if the funds are not in the form of cash.

The bill would apply to funds held as security for the payment of reinsurance obligations for life, health, accident, property, and casualty insurers.

The bill would retain requirements that the funds held as security be invested only in securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualify as admitted assets.

The bill would take effect September 1, 2015, and would apply to funds held as security on or after that date.

SUPPORTERS SAY:

CSHB 1344 would increase the types of investments allowed when funds are held as security for reinsurance contracts. In 48 other states, reinsurance companies that hold funds in trust as security for the payment of reinsurance obligations have more opportunities to invest their funds, add to the trust, and provide income to pay claims. Texas insurers are competitively disadvantaged from finding reinsurers because of existing restrictions on reinsurance trust fund investments. The bill would put Texas-domiciled insurers on the same level as insurers in most other states.

Capital support from reinsurance also allows insurers, especially small domestic insurers, to write more business. The bill would increase availability of reinsurance to Texas insurers and allow small insurers to write more business.

The bill would retain important safeguards in state code by still requiring reinsurance trust fund investments in securities to be limited to those that

qualify as an admitted asset and those securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from all U.S. states, the District of Columbia, and five territories. Requiring securities to be limited to these categories would ensure that funds were invested responsibly, would ensure liquidity, and would ensure protection for both consumers and insurance companies.

OPPONENTS SAY:

By reducing restrictions on how funds held in trust for reinsurance contracts can be invested, the bill could reduce the liquidity of reinsurance trust funds and their availability to pay claims.